

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KYLE YOUNG,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. 1:22-cv-00161-CDB (SS)

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT;
DENYING DEFENDANT'S CROSS-
MOTION FOR SUMMARY JUDGMENT

(Docs. 14, 15)

Plaintiff Kyle Young ("Plaintiff") seeks judicial review of a final decision of the Commissioner of Social Security ("Commissioner" or "Defendant") denying his application for disability benefits under the Social Security Act. (Doc. 1). The matter is currently before the Court on the Administrative Record ("AR") and the parties' briefs, which were submitted without oral argument. (Docs. 14, 15, 16).

I. BACKGROUND

A. Administrative Proceedings and ALJ's Decision

On December 30, 2019, Plaintiff filed an application for supplemental security income under Title XVI of the Social Security Act. (AR 185-194). Plaintiff's initial application was denied; upon reconsideration, it was once again denied. (AR 66, 77). On November 25, 2020, Plaintiff requested a hearing before an Administrative Law Judge ("ALJ"). (AR 97-99). The

1 ALJ, Joyce Frost-Wolf, held a hearing on April 30, 2021, where Plaintiff and a vocational expert
2 testified. (AR 30-56). On May 13, 2021, the ALJ issued her decision denying Plaintiff's claim.
3 (AR 14-25). The Appeals Council denied Plaintiff's request for review on January 6, 2022. (AR
4 1-3). Plaintiff subsequently filed this action seeking judicial review of the ALJ's decision. (Doc.
5 1).

6 After reviewing the evidence, the ALJ considered Plaintiff's claims using the five-step
7 sequential evaluation required by 20 CFR § 404.1520(a)(4). At step one, the ALJ found that
8 Plaintiff had not engaged in substantial gainful activity since December 30, 2019, the date of the
9 application. At step two, the ALJ found that Plaintiff had the following severe impairments:
10 degenerative disc disease of the cervical and lumbar spine, shoulder arthritis, carpal tunnel
11 syndrome ("CTS"), and obesity. She also determined that Plaintiff had further functional
12 difficulties in the form of: high blood pressure, bunions on both feet, varicose veins, bad knees,
13 and hiatal hernia. She found no evidence in the file that these impairments caused more than
14 minimal functional limitations for 12 months or longer, providing as an example that in
15 September 2019, the Plaintiffs hypertension and varicose veins were clinically stable, with a
16 general citation to Exhibit 3F. (AR 19).

17 She found no evidence that, despite Plaintiff being a candidate for bunion deformity
18 surgery, any such surgery was ever done nor were there treatment notes documenting continued
19 complaints of bunion foot pain in 2020 and 2021, citing Exhibits 4F and 9F. She provides that in
20 November 2020, the most recent treatment record, Plaintiff's blood pressure was within normal
21 limits and he was not on an anti-hypertensive medication, citing Exhibit 12F. She concluded that
22 high blood pressure, bilateral bunions, and varicose veins were non-severe impairments for
23 purposes of her decision. *Id.* Regarding Plaintiff's bad knees and hernia, she found no objective
24 medical evidence of evaluations, diagnoses, or treatments in the file and, as such, concluded
25 under 20 CFR § 416.908 and § 416.903(a) that these were non-medically determinable
26 impairments. *Id.* at 20.

27 At step three, the ALJ concluded that Plaintiff does not have an impairment, nor
28 combination of impairments, that meets or medically equals the severity of one of the listed

1 impairments in 20 CFR Part 404, Subpart P, Appendix 1. She found that Plaintiff's back and
2 neck impairments had not resulted in nerve root compromise, with appropriate imaging and
3 clinical findings, as required by section 1.15 of the listings of impairments (disorders of the
4 spine). She also noted no presence of medical documentation that the Plaintiff's shoulder
5 impairments have resulted in inability to use either extremity to independently initiate, sustain,
6 and complete work-related activities involving fine and gross movements as set out in section
7 1.18D of the listings. *Id.*

8 The ALJ noted that Plaintiff weighed approximately 297 pounds at the time of the
9 application filing, which for a person of his height, corresponded to a Body Mass Index ("BMI")
10 of 38.9, or moderate obesity under the clinical guidelines of the National Institutes of Health
11 ("NIH"), citing to page 2 of Exhibit 2E. She found no evidence in the file that Plaintiff's obesity
12 aggravates his other impairments so much as to result in listing-level severity. She concluded
13 that, citing to Social Security Ruling ("SSR") 19-2p, while Plaintiff's obesity was a severe
14 impairment, it did not, alone or in combination with other impairments, meet or medically equal a
15 listed impairment. *Id.*

16 At step four, the ALJ found that Plaintiff had the residual functional capacity ("RFC") to
17 perform light work as defined in 20 CFR § 416.967(b), except he was limited to jobs that could
18 be performed either sitting or standing with an opportunity to alternate positions at 45-minute
19 intervals. Plaintiff could occasionally climb ramps and stairs but never ladders, ropes, or
20 scaffolds. Plaintiff could also only occasionally balance, stoop, crouch, kneel, and crawl.
21 Plaintiff could occasionally push and pull with the upper extremities and frequently handle and
22 finger bilaterally. Finally, Plaintiff could have no work in environments with concentrated
23 exposure to heavy machinery with fast moving parts or unprotected heights. The ALJ noted that
24 she had considered all symptoms and the extent to which these symptoms can reasonably be
25 accepted as consistent with the objective medical evidence and other evidence, based on the
26 requirements of 20 CFR § 416.929 and SSR 16-3p, and that she had considered the medical
27 opinions and prior administrative medical findings in accordance with the requirements of 20
28 CFR § 416.920c. *Id.*

1 When considering Plaintiff's symptoms, the ALJ noted that she must follow the two-step
2 process (presumably, as set forth in SSR 16-3p). First, she must determine whether there is an
3 underlying medically determinable physical or mental impairment; namely, an impairment or
4 impairments that can be shown by medically acceptable clinical or laboratory diagnostic
5 techniques that could reasonably be expected to produce Plaintiff's pain or other symptoms.
6 Second, once an underlying physical or mental impairment(s) that could reasonably be expected
7 to produce Plaintiff's pain or other symptoms has been shown, she must evaluate the intensity,
8 persistence, and limiting effects of Plaintiff's symptoms to determine the extent to which they
9 limit Plaintiff's work-related activities. For this purpose, whenever statements about the
10 intensity, persistence, or functionally limiting effects of pain or other symptoms are not
11 substantiated by objective medical evidence, she must consider other evidence in the record to
12 determine if Plaintiff's symptoms limit the ability to do work-related activities. *Id.* at 21.

13 The ALJ noted the following medical findings: Plaintiff had alleged disability due to a
14 herniated intervertebral disc, spinal stenosis, and sciatica; she provided a citation to page 2 of
15 Exhibit 2E and a general citation to the hearing transcript. In his disability report from January 3,
16 2020, Plaintiff indicated that he weighed approximately 287 pounds, which, for a person of his
17 height, corresponds to a BMI of 38.9, or "moderate" obesity under the clinical guidelines of the
18 NIH; the ALJ cites to page 2 of Exhibit 2E. At the hearing, the ALJ stated that Plaintiff testified
19 that he spent his days alternating positions between standing, sitting, walking, and lying down due
20 to pain. Plaintiff explained that he does activities in increments of 45 to 60 minutes followed by
21 rest. If Plaintiff sits for more than an hour, his back becomes very stiff and he loses his balance
22 when he tries to get up. Standing in one place also aggravates his back pain. In addition, the ALJ
23 stated that Plaintiff had noticed that his grip is weak when he tries to pull wet clothes out of his
24 washer. He also needs to switch hands every five minutes when he talks on the phone because
25 the holding hand goes tingly and numb. She noted that Plaintiff has difficulty getting up from
26 squatting and has to use his hands. *Id.*

27 In terms of treatment, Plaintiff was not taking any prescribed pain medication at the time
28 of the hearing because it "does not work"; the ALJ did not provide a citation for the source of this

1 quote. The Court presumes the ALJ intended to refer to Plaintiff's testimony the pain
2 medications "don't do anything" on page 14 of the hearing transcript (AR 45). Specifically, over-
3 the-counter pain medication "does not touch the pain," so he does not take any; the ALJ also did
4 not provide a citation for the source of this quote. The Court presumes the ALJ intended to refer
5 to the phrase "doesn't even touch it" on page 13 of the hearing transcript (AR 44). Instead, he
6 uses heat, ice, an inversion table, braces, and rest to alleviate pain during the day; for this, the
7 ALJ provides a general citation to the hearing transcript. As for daily activities, the Plaintiff lives
8 alone and is able to do household chores, with breaks every 30-60 minutes. He is also able to
9 care for his dogs and take them out for walks but needs a long-handle scooper to clean up after
10 them as he is unable to bend and squat without pain. Plaintiff also cannot sit and watch television
11 for more than an hour at a time because his back becomes too stiff; for this, the ALJ provides a
12 general citation to the hearing transcript. She concluded that Plaintiff has described daily
13 activities that support a remaining functional capacity for a range of light exertion. *Id.*

14 The ALJ concluded that the objective findings in the case did not provide strong support
15 for Plaintiff's allegations of disabling symptoms and limitations. She found that the medical
16 findings did not support the existence of limitations greater than those assessed above. The ALJ
17 concluded from the records that Plaintiff suffered an exacerbation in his chronic lower back pain
18 and sciatica in June 2019, following a chiropractic adjustment; she cited to page 12 of Exhibit 2F.
19 He first saw his family physician and was prescribed a short course of cyclobenzaprine (a muscle
20 relaxer). On exam at that time, Plaintiff appeared in mild distress and was unable to sit due to
21 back pain. His gait, she provided, was normal and he had intact range of motion in the lumbar
22 spine. *Id.*

23 No neurological deficits (namely, strength and sensation) were noted; the ALJ cited to
24 pages 12 and 13 of Exhibit 2F. *Id.* at 21-22. A week later, Plaintiff sought emergency room care
25 for the same problem. An exam revealed costovertebral angle tenderness and right-sided lumbar
26 paraspinal soft tissue tenderness. Straight leg raising was positive at 45 degrees on the right and
27 negative on the left. Sensation and strength were unimpaired; the ALJ provided a general citation
28 to Exhibit 1F. She noted that an MRI scan of the lumbar spine, in turn, showed multilevel

1 degenerative disc disease, including multilevel disc bulging with moderate central canal stenosis
2 at L1 and severe right neuroforaminal narrowing with encroachment of the existing right nerve
3 root at L4-5; the ALJ cites to page 4 of Exhibit 1F. Plaintiff was referred to neurology for further
4 evaluation; she cites to page 16 of Exhibit 2F. *Id.* at 22.

5 The ALJ cites to pages 17 to 19 of Exhibit 2F for the findings that Plaintiff had
6 degenerative changes to his cervical spine, with moderate deformity of the thecal sac, moderate to
7 severe foraminal narrowing, widening of the right AC joint, and moderate degenerative changes
8 at the left acromioclavicular. She notes Plaintiff visited a neurologist for pain complaints in
9 August 2019. At that visit, mild weaknesses were recorded in both lower extremities and Plaintiff
10 was prescribed Cymbalta and referred to electromyogram and nerve conduction studies
11 (“EMG/NCS”) of the upper extremities; the ALJ cites to pages 6 and 7 of Exhibit 5F. The
12 EMG/NCS showed mild to moderate bilateral carpal tunnel syndrome and bilateral C5/C6
13 cervical radiculopathy; the ALJ cites to page 4 of Exhibit 5F. *Id.*

14 The ALJ notes Plaintiff then saw a neurosurgeon in September 2019, but no immediate
15 surgery was recommended. The neurosurgeon concluded that Plaintiff’s weight was exacerbating
16 a lumbar spine sprain and recommended weight loss first. Plaintiff’s BMI at that time was 39.6.
17 In December 2019, the filing date of the present application, Plaintiff returned to his neurologist
18 and reported that he had not been doing well with respect to his pain. He had scheduled to see a
19 pain management specialist; the ALJ cites to page 1 of Exhibit 5F. The neurologist prescribed
20 Neurontin, in addition to Cymbalta; she cites to page 2 of Exhibit 5F. She finds limited evidence
21 of treatment after that. *Id.*

22 In September 2020, Plaintiff had a consultative medical examination at the request of the
23 Social Security Administration. His exam was within normal limits except for tenderness over
24 the ball of the right foot, in the area of the second and third metatarsal areas, and decreased
25 sensation to touch in the right toes; the ALJ provides a general citation to Exhibit 8F. Then, in
26 November 2020, Plaintiff saw a family physician with complaints of joint pain with popping in
27 the wrists, thumbs, and left elbow. He also asked to see a new neurologist for bilateral foot
28 neuropathy. No concerning abnormalities were noted on exam, and Plaintiff was given a referral

1 to neurology; the ALJ provides a general citation to Exhibit 12F. She notes that this is the last
2 available treatment note in the file. *Id.*

3 The ALJ found that Plaintiff's medically determinable impairments could reasonably be
4 expected to cause the alleged symptoms; however, his statements concerning the intensity,
5 persistence and limiting effects of these symptoms were not fully supported by the preponderance
6 of the evidence of record. She found the available imaging studies, including the MRI scans of
7 the lumbar and cervical spine, the X-rays of the shoulders, and the EMG/NCS of the upper
8 extremities showed a number of underlying abnormalities. More recent physical exams had also
9 revealed slight compromises in strength and sensation in the lower extremities, especially on the
10 right side. She noted Plaintiff's treatment history was minimal. She saw no evidence that he had
11 tried physical therapy, injection therapy, or other pain management interventions since his lumbar
12 spine pain exacerbation in June 2019. *Id.* at 23.

13 In September 2019, she noted surgery was not deemed urgent and there was no evidence
14 of neurosurgery follow-up since then. Plaintiff was not taking any pain medications at the time of
15 his disability hearing despite his allegations of severe pain and stiffness. She noted there was also
16 no evidence of emergency room visits for uncontrolled pain after the June 2019 visit. She found
17 that, without more evidence of attempted treatment, the RFC assessment above sufficiently
18 accommodated Plaintiff's subjective complaints, and any additional functional limitations are not
19 supported by the record at this time. *Id.*

20 She provided that the state agency medical consultants (L. Pancho, M.D., and M. Yee,
21 M.D.) limited Plaintiff to lifting and carrying up to 20 pounds occasionally and 10 pounds
22 frequently, standing and walking for about six hours in a workday, occasional performance of all
23 postural activities except for no climbing of ladders, ropes, or scaffolds, and frequent bilateral
24 handling and fingering; she cited to page 7 and 8 of Exhibit 1A and 7 to 9 of Exhibit 3A. She
25 found that this assessment was supported with a thorough review of the available records at the
26 time and that it was also consistent with the preponderance of the objective findings in the file,
27 including the diagnostic findings of abnormalities in the hands, shoulders, neck, and low back and
28 the clinical findings of some weakness and reduced sensation in the lower extremities, especially

1 on the right side; she cited to page 4 of Exhibit 1F, pages 17 and 18 of Exhibit 2F, page 4 of
2 Exhibit 5F, and cited generally to Exhibits 8F and 10F. *Id.*

3 The ALJ concluded that the prior administrative medical findings were persuasive, except
4 she additionally found that limitations on work around hazards and allowance for position
5 changes are justified in this case due to evidence of weakness and diminished sensation in the
6 lower extremities; she cited generally to Exhibits 5F, 8F, and 10F. The consultative medical
7 examiner (Birgit Siekerkotte, M.D.) found Plaintiff capable of lifting and carrying 50 pounds
8 occasionally and 25 pounds frequently; standing and walking up to six hours in a workday; and
9 frequent climbing, stooping, crouching, kneeling, and crawling; the ALJ cited to page 5 of
10 Exhibit 8F. She found this assessment unpersuasive, noting it was not consistent with other
11 evidence in the file, including the MRI scans of the lumbar and cervical spine, the X-rays of the
12 shoulders, and the EMG/NCS of the upper extremities; she cited to page 4 of Exhibit 1F, pages 17
13 to 19 of Exhibit 2F, and page 4 of 5F. *Id.*

14 At step five, the ALJ concluded that Plaintiff was unable to perform any past relevant
15 work. Plaintiff had previously worked as a camera operator, found to be medium exertion as
16 generally performed under the relevant DOT standard and heavy as actually performed by
17 Plaintiff. The ALJ based her decision on the testimony of the vocational expert, finding the
18 exertional demands of Plaintiff's past relevant work to exceed the RFC; she provides a general
19 citation to the hearing transcript. *Id.*

20 The ALJ noted that Plaintiff, at age 49 at the time of filing of his initial application, was
21 then defined as a younger individual (ages 18 to 49) but subsequently turned 50 years of age and
22 therefore changed category, to closely approaching advanced age. *Id.* at 23. She noted Plaintiff
23 has at least a high school education and that transferability of job skills was not material since she
24 concluded Plaintiff was not disabled whether or not he had transferable job skills. *Id.* at 24.

25 The ALJ cited to Medical-Vocational Guidelines, 20 CFR Part 404, Subpart P, Appendix
26 2 when noting the jobs that the vocational expert testified Plaintiff could perform, such as
27 photocopy machine operator, mail clerk, and office helper. *Id.* at 24-25. She provided that the
28 vocational expert testified that the Dictionary of Occupational Titles does not provide specific

1 information about different types of climbing (stairs or ladders) or about a sit or stand option for
2 listed occupations and that his testimony on this point was based on his professional experience
3 and knowledge of how representative occupations are generally performed in the economy; she
4 provides a general citation to the hearing transcript. She concluded that the additional
5 information does not render the vocational expert's testimony inconsistent with the Dictionary of
6 Occupational Titles under SSR 00-4p. *Id.* at 25.

7 Finally, the ALJ found that Plaintiff was capable of making a successful adjustment to
8 other work that exists in significant numbers in the national economy. She determined that a
9 finding of "not disabled" was appropriate. *Id.*

10 **B. Medical Record and Hearing Testimony**

11 The relevant hearing testimony and medical record were reviewed by the Court and will
12 be referenced below as necessary to this Court's decision.

13 **II. STANDARD OF REVIEW**

14 A district court's review of a final decision of the Commissioner of Social Security is
15 governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is limited; the
16 Commissioner's decision will be disturbed "only if it is not supported by substantial evidence or
17 is based on legal error." *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012). "Substantial
18 evidence" means "relevant evidence that a reasonable mind might accept as adequate to support a
19 conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently, substantial evidence
20 equates to "more than a mere scintilla[,] but less than a preponderance." *Id.* (quotation and
21 citation omitted). "It is such relevant evidence as a reasonable mind might accept as adequate to
22 support a conclusion." *Healy v. Astrue*, 379 Fed. Appx. 643, 645 (9th Cir. 2010). In determining
23 whether the standard has been satisfied, a reviewing court must consider the entire record as a
24 whole rather than searching for supporting evidence in isolation. *Id.*

25 The court will review only the reasons provided by the ALJ in the disability determination
26 and may not affirm the ALJ on a ground upon which she did not rely. Social Security Act § 205,
27 42 U.S.C. § 405(g). In reviewing a denial of benefits, a district court may not substitute its
28 judgment for that of the Commissioner. "The court will uphold the ALJ's conclusion when the

evidence is susceptible to more than one rational interpretation.” *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008). Further, a district court will not reverse an ALJ’s decision on account of an error that is harmless. *Id.* An error is harmless where it is “inconsequential to the [ALJ’s] ultimate nondisability determination.” *Id.* (quotation and citation omitted). The party appealing the ALJ’s decision generally bears the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

A. Applicable Legal Standards

A claimant must satisfy two conditions to be considered “disabled” within the meaning of the Social Security Act. First, the claimant must be “unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be “of such severity that he is not only unable to do his previous work[,] but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.” 42 U.S.C. § 1382c(a)(3)(B).

The Commissioner has established a five-step sequential analysis to determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. § 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(b).

If the claimant is not engaged in substantial gainful activity, the analysis proceeds to step two. At this step, the Commissioner considers the severity of the claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from “any impairment or combination of impairments which significantly limits [his or her] physical or mental ability to do basic work activities,” the analysis proceeds to step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy this severity threshold, however, the Commissioner must find that the claimant is not disabled. *Id.*

At step three, the Commissioner compares the claimant’s impairment to impairments

1 recognized by the Commissioner to be so severe as to preclude a person from engaging in
2 substantial gainful activity. 20 C.F.R. § 416.920(a)(4)(iii). If the impairment is as severe or more
3 severe than one of the enumerated impairments, the Commissioner must find the claimant
4 disabled and award benefits. 20 C.F.R. § 416.920(d).

5 If the severity of the claimant's impairment does not meet or exceed the severity of the
6 enumerated impairments, the Commissioner must pause to assess the claimant's "residual
7 functional capacity." Residual functional capacity (RFC), defined generally as the claimant's
8 ability to perform physical and mental work activities on a sustained basis despite his or her
9 limitations (20 C.F.R. § 416.945(a)(1)), is relevant to both the fourth and fifth steps of the
10 analysis.

11 At step four, the Commissioner considers whether, in view of the claimant's RFC, the
12 claimant is capable of performing work that he or she has performed in the past (past relevant
13 work). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is capable of performing past relevant
14 work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. § 416.920(f). If
15 the claimant is incapable of performing such work, the analysis proceeds to step five.

16 At step five, the Commissioner considers whether, in view of the claimant's RFC, the
17 claimant is capable of performing other work in the national economy. 20 C.F.R. §
18 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational
19 factors such as the claimant's age, education, and past work experience. *Id.* If the claimant is
20 capable of adjusting to other work, the Commissioner must find that the claimant is not disabled.
21 20 C.F.R. § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the analysis
22 concludes with a finding that the claimant is disabled and is therefore entitled to benefits. *Id.*

23 The claimant bears the burden of proof at steps one through four above. *Tackett v. Apfel*,
24 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to step five, the burden shifts to the
25 Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such
26 work "exists in significant numbers in the national economy." 20 C.F.R. § 416.960(c)(2); *Beltran*
27 *v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

28 ///

III. ISSUES AND ANALYSIS

Plaintiff seeks judicial review of the Commissioner's final decision denying his application for SSI. (Doc. 1). Plaintiff raises two issues in his motion for summary judgment: (1) The ALJ failed to provide clear, convincing, and well-supported reasons for discounting Plaintiff's allegations of pain and physical dysfunction and (2) the ALJ failed to adequately evaluate the limiting effects of Plaintiff's obesity. (Doc. 14 at 6).

A. Whether the ALJ Failed to Provide Clear, Convincing, and Well-Supported Reasons for Discounting Plaintiff's Allegations of Pain and Physical Dysfunction

"In assessing the intensity and persistence of symptoms, the ALJ must consider a claimant's daily activities; the location, duration, frequency, and intensity of the pain or other symptoms; precipitating and aggravating factors; the type, dosage, effectiveness and side effects of medication taken to alleviate pain or other symptoms; treatment, other than medication received for relief of pain or other symptoms; any other measures used to relieve pain or other symptoms; and other factors concerning a claimant's functional limitations and restrictions due to pain or other symptoms." *Christine G. v. Saul*, 402 F. Supp. 3d 913, 921 (C.D. Cal. 2019) (citing 20 C.F.R. § 416.929).

Plaintiff argues that he did not allege his back pain rendered him totally incapacitated and he was not required to do so to establish entitlement to benefits. (Doc. 14 at 6). He argues that the ALJ did not provide clear and convincing reasons in rejecting his symptom testimony. *Id.* at 7. He provides that he had used physical therapy, chiropractic treatment, and narcotic pain medications to attempt to alleviate pain in the past with little success, as outlined in the medical records of his neurosurgeon, who found him to be a surgical candidate. *Id.* at 8. Finally, Plaintiff states that the medical record contained ample diagnostic evidence to support Plaintiff's reported symptoms and the rest breaks and accommodations he needed to accomplish his daily tasks. *Id.* at 9.

An ALJ's reasons for rejecting a claimant's subjective symptom statements must be specific, clear, and convincing. General findings regarding a claimant's credibility are insufficient; rather, the ALJ must identify what testimony is not credible and what evidence

undermines the claimant's complaints. The ALJ's findings must be sufficiently specific to allow a reviewing court to conclude the adjudicator rejected the claimant's testimony on permissible grounds and did not arbitrarily discredit a claimant's testimony regarding pain. A reviewing court should not be forced to speculate as to the grounds for an adjudicator's rejection of a claimant's allegations of disabling pain. As such, an implicit finding that a plaintiff's testimony is not credible is insufficient. *Christine G.*, 402 F. Supp. 3d at 921-922 (citations and quotations omitted). The standard is "not an easy requirement to meet: The clear and convincing standard is the most demanding required in Social Security cases." *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017).

The ALJ calls into question Plaintiff's credibility in regards to his symptoms of pain. The primary foundation she provides for this is the lack of emergency room visits for pain; no evidence that Plaintiff had tried physical therapy, injection therapy, or other pain management interventions since his lumbar spine pain exacerbation in June 2019; Plaintiff not taking any pain medications at the time of the hearing; and no evidence of a neurosurgery follow-up. (AR 23). She found that, without more evidence of attempted treatment, the light exertion RFC assessment sufficiently accommodated the Plaintiff's subjective complaints, and any additional functional limitations were not supported by the record at that time. (AR 23).

1. Course of Treatment

i. Pain Medication

Although an "unexplained or inadequately explained failure" to seek treatment or follow prescribed treatment can be a valid reason to discount a claimant's testimony, the ALJ is required to consider plaintiff's reasons for not taking medications. *Trevizo*, 871 F.3d at 679-80. Here, the ALJ did not adequately consider Plaintiff's reasons for not taking pain medication.

In his hearing testimony, Plaintiff testified that aspirin and other similar medications do not help with his pain. He may be referring, as well, to morphine not helping with his pain either, though he does not name the drug specifically. He notes fentanyl is the only thing that helped; he may have been specifically referring to medications only in this portion of the questioning, as opposed to other methods of pain management, but the record is unclear. (AR 44).

1 The medical record shows that Plaintiff has taken numerous pain medications over
2 significant lengths of time. Exhibit 5F records three visits by Plaintiff to neurologist Jian C. Lin.
3 The first is dated August 12, 2019, the second September 30, 2019, and the third December 16,
4 2019. (AR 311-317). Dr. Lin notes that, during the first visit, Plaintiff presented for evaluation
5 of back and neck pain. Plaintiff is prescribed 30 milligram Cymbalta in caplet form to take once
6 a day, with three refills. (AR 317).

7 After the first visit, on September 16, 2019, Plaintiff had an appointment with
8 neurosurgeon Bjorn M. Lobo, who noted that Plaintiff was currently taking albuterol,
9 cyclobenzaprine HCl, ibuprofen, methylprednisolone, morphine, and Tylenol. (AR 347).
10 Though duloxetine and gabapentin are not mentioned, this suggests Plaintiff was taking multiple
11 pain medications at least up to the point of this visit, multiple months after June 2019, likely
12 evidencing a continued effort to manage pain. (AR 347).

13 During the second visit with Dr. Lin, the records provide that “[s]ince last seen patient has
14 not been well. Patient states he is still having neck and back pain. . . . Patient denies taking
15 medication for the pain. Patient states he went to a back surgeon to see his options . . . told that
16 he is a candidate for past [sic] surgery but need to losing [sic] weight before surgery.” (AR
17 313). Dr. Lin increased Plaintiff’s dosage of Cymbalta from 30 milligram per caplet to 60
18 milligram per caplet, to be taken once a day with four refills. (AR 314).

19 During the third visit, Dr. Lin records that Plaintiff “has not been well. Patient states he is
20 still having the neck and back pain. . . . Patient denies taking medication for the pain. Patient is
21 currently dieting and trying to lose weight to help with his pain.” He then notes, “Patient has
22 scheduled for pain clinic.” (AR 311). Dr. Lin then refills Plaintiff’s 60 milligram Cymbalta
23 prescription, with four additional refills, and prescribes Neurontin at 300 milligrams per capsule
24 with three refills, with a follow-up visit set for three months later. (AR 312).

25 As the medical records were prepared on January 30, 2020 (AR 322), they do not include
26 any records from further follow-ups. However, an additional request for records to Kern County
27 Neurological Medical Group on April 27, 2020 resulted in a return of the form with a notation
28 stating the date of the last appointment was December 16, 2019, indicating Plaintiff had not yet

1 returned for a follow-up. (AR 324-325). During the hearing, Plaintiff mentioned communication
2 issues with Dr. Lin and said he had recently switched to a different neurologist. (AR 50).

3 Dr. Lin notes that Plaintiff denied taking medication for the pain in both follow-up
4 appointments. This may suggest Plaintiff was not taking the prescribed medications. However,
5 this is unclear, as Dr. Lin then refills Plaintiff's Cymbalta prescription at a higher dose in the first
6 recorded follow-up, and then adds Neurontin on top of Cymbalta in the second follow-up. This
7 suggests Plaintiff may have been taking his prescribed medications, and Dr. Lin may have been
8 referring to other medications, such as those able to be purchased over-the-counter. Plaintiff did
9 mention during the hearing that his neurologist gave him duloxetine (Cymbalta) and gabapentin
10 (Neurontin), which he tried, but they did not do anything and that he had learned they simply
11 "mask the condition anyway." (AR 45).

12 A medical appointment regarding a skin lesion, dated August 12, 2019, notes "no known
13 medications." (AR 352). However, the consultative exam records, dated September 8, 2020 and
14 prepared by Dr. Siekerkotte, note Plaintiff's "current medications" as duloxetine and gabapentin
15 (AR 336). And the most recent medical records, from a family medicine physician and dated
16 November 16, 2020 (AR 361-364), note Plaintiff taking albuterol, cyclobenzaprine, doxycycline,
17 methylprednisolone, and morphine. This suggests Plaintiff was possibly again taking pain
18 medications. (AR 362).

19 Plaintiff's proffered reason for not taking pain medications during the hearing was their
20 ineffectiveness. (AR 44-45). Plaintiff relies on *Orn v. Astrue* (495 F.3d 625 (9th Cir. 2007)) for
21 the proposition that a "claimant's failure to follow or pursue a prescribed course of treatment
22 cannot be the basis for an adverse credibility finding where the claimant has a good reason for not
23 doing so." (Doc. 14 at 7-8). In *Orn*, the Ninth Circuit held that the ALJ erred in finding that the
24 claimant's credibility was undermined by failure to follow a specific diet regarding obesity that
25 was outlined in patient discharge instructions. The Ninth Circuit explained that in "the case of
26 impairments where the stimulus to seek relief is less pronounced, and where medical treatment is
27 very unlikely to be successful, the approach to credibility makes little sense." *Orn*, 495 F.3d at
28 638. The Ninth Circuit explained, for example, the if the claimant failed to seek treatment or

1 follow prescribed treatment for the condition of disabling pain, an ALJ may use such failure as a
2 basis for finding that complaint exaggerated or unjustified. *Id.*

3 In a later case, the Ninth Circuit discussed credibility as regards to failure to take pain
4 medications. *See Trevizo*, 871 F.3d at 664. In *Trevizo*, the ALJ weighed against a claimant's
5 credibility her failure to take narcotic medications to alleviate pain. The Ninth Circuit held that
6 the ALJ failed to consider the plaintiff's reasons for doing so. "The ALJ did not address the
7 believability of Trevizo's proffered reasons: her fear of becoming addicted to narcotics and the
8 ability of alternate drugs to control her pain. The ALJ's weighing of Trevizo's failure to take
9 narcotics against her credibility was thus erroneous." *Id.* at 679-680.

10 While in many cases unexplained refusal to treat reported pain with medication could call
11 into question a claimant's credibility, here, Plaintiff discontinued use because he found the
12 medications to be ineffective and the record shows extensive attempts at using such medications.
13 The ALJ did not meet the applicable clear and convincing standard in merely citing but failing to
14 consider and address Plaintiff's proffered reasons for not taking pain medications, namely their
15 ineffectiveness, as required under *Orn* and *Trevizo*. *See Stuter v. Astrue*, No. CIV S-08-0129
16 DAD, 2009 WL 2824740, at *5 (E.D. Cal. Sept. 1, 2009) ("Where a claimant provides evidence
17 of a good reason for not taking medication for her symptoms, her symptom testimony cannot be
18 rejected for not doing so.").

19 Defendant argues that the ALJ properly discounted Plaintiff's testimony for the following
20 reasons: (1) Plaintiff's pain treatment was conservative; (2) he references "instances" of using
21 pain medication, such as morphine, but that was in response to a single exacerbation of his back
22 pain and his provider did not add it for regular pain relief; (3) the hospital denied his request for
23 fentanyl patches; (4) and Plaintiff admitted gabapentin "masked" his pain, suggesting it did
24 provide some relief, but Plaintiff did not take it because it did not "cure" his pain. (Doc. 15 at 12-
25 13). However, the ALJ did not elaborate as such in her decision and thus the record is
26 undeveloped as to these arguments. A court can "review only the reasons provided by the ALJ in
27 the disability determination and may not affirm the ALJ on a ground upon which [she] did not
28 rely." *Garrison v. Colvin*, 759 F.3d 995, 1010 (9th Cir. 2014).

1 In sum, the ALJ failed to adequately consider Plaintiff's reasons regarding his failure to
2 take pain medication and, as such, erroneously weighed that factor against his credibility.

3 **ii. Physical Therapy**

4 Dr. Lin recorded that Plaintiff was scheduled for a "pain clinic" and dieting in an attempt
5 to lose weight to help with his pain. The latter is likely in response to his neurosurgical
6 appointment, during which Dr. Lobo informed Plaintiff that his obesity may be exacerbating his
7 back issues and resulting pain. (AR 348).

8 During that appointment on September 16, 2019, Dr. Lobo noted that he believed that
9 "weight gain is his most pressing issue. I have spent over 40 minutes discussing and counseling
10 him with weight loss and weight related issues including diet. I highly recommended the patient
11 be evaluated by dietitian for long-term weight loss." (AR 348). After discussing Plaintiff's
12 varied sources of pain, Dr. Lobo also reported Plaintiff had used "[p]hysical therapy, [n]arcotics,
13 [c]hiropractor, and these therapies have not provided sufficient relief." (AR 347).

14 The ALJ noted the record included no evidence that Plaintiff had tried physical therapy,
15 injection therapy, or other pain management interventions since his lumbar spine pain
16 exacerbation in June 2019. (AR 23). However, as evidenced by the content of the medical
17 records described above, it may be that Plaintiff was taking medications prescribed by Dr. Lin
18 after June 2019, which would evidence actions Plaintiff was taking to manage his pain,
19 potentially up to and after December 2019. Further, Dr. Lin's records reflect Plaintiff saw a
20 chiropractor and scheduled an appointment for a pain management clinic. (AR 311, 316).
21 Additionally, Plaintiff's attempt to lose weight to help with his pain could be regarded as further
22 evidence of a pain management strategy, as weight loss was specifically mentioned by his
23 neurosurgeon as a means to potentially alleviate the back issues causing a significant amount of
24 pain. (AR 348). Finally, his neurosurgeon also noted other methods Plaintiff had used to relieve
25 pain, without success, specifically mentioning physical therapy. (AR 347).

26 The ALJ appears to have weighed against Plaintiff's credibility the fact that he did not
27 pursue physical therapy. However, the record demonstrates that Plaintiff did pursue physical
28 therapy sometime prior and it was found to be ineffective. The ALJ erred by not discussing this

1 in her decision and incorrectly assigning against Plaintiff's credibility that he purportedly did not
2 pursue physical therapy.

3 **iii. Other Methods of Pain Management**

4 Plaintiff notes numerous other methods he uses, or used in the past, in attempts to alleviate
5 his pain. During the hearing, Plaintiff provided he used ice packs and heating pads, namely
6 Salonpas patches which he keeps in his wallet. He also stated he previously used a table with
7 rollers underneath that are used by chiropractors, which helped his pain, but can no longer use it
8 due to a problem in the fifth vertebrae of his back. He mentions purchasing a hot tub and using
9 an inversion table. He also mentions braces, compression devices for his knees, and a
10 weightlifting belt when doing yardwork or moving items. (AR 43). He provides he uses ice
11 packs and heating patches daily. (AR 44).

12 An ALJ satisfies the clear and convincing reasons standard to discount a claimant's
13 symptomology testimony only where she identifies the testimony she considers not credible and
14 what evidence undermines the claimant's complaints. *See Smolen v. Chater*, 80 F.3d 1273, 1284
15 (9th Cir. 1996); *Leusch v. Berryhill*, 358 F. Supp. 3d 896 (D. Ariz. 2019); *Stuter*, 2009 WL
16 2824740, at *5. Here, the ALJ briefly mentioned a number of Plaintiff's pain management
17 methods in a single sentence (AR 21) but did not elaborate further on whether or not they were
18 considered or rejected and the reasons for her conclusions. As such, the ALJ's analysis was
19 insufficient and she failed to develop the record.

20 **2. Daily Activities**

21 Plaintiff argues that his statements regarding his daily activities were not at odds with his
22 disability claim. He states that he testified to the fact that he took breaks between daily activities
23 "at least every 60 minutes" and "thus, it follows that Plaintiff's testimony regarding his daily
24 activities supported a need for four unscheduled rest breaks during an eight-hour work period in
25 addition to normally scheduled work breaks." He states that the vocational expert testified that
26 "even an additional two 15-minute rest periods would prevent Plaintiff from performing
27 competitive work." (Doc. 14 at 9).

28 The ALJ was permitted to consider daily living activities in her credibility analysis. The

1 Ninth Circuit has explained that “if a claimant engages in numerous daily activities involving
2 skills that could be transferred to the workplace, the ALJ may discredit the claimant’s allegations
3 upon making specific findings relating to those activities.” *Burch v. Barnhart*, 400 F.3d 676, 681
4 (9th Cir. 2005); *see Morgan v. Apfel*, 169 F.3d 595, 600 (9th Cir. 1999) (finding that claimant’s
5 ability to fix meals, do laundry, work in the yard, and occasionally care for his friend’s child was
6 evidence of claimant’s ability to work). Daily activities may be grounds for an adverse credibility
7 finding if a claimant is able to spend a substantial part of his day engaged in pursuits involving
8 capacities that are transferable to a work setting. *Molina v. Astrue*, 674 F.3d 1104, 1113 (9th Cir.
9 2012). However, “the mere fact that a plaintiff has carried on certain daily activities ... does not
10 in any way detract from her credibility as to her overall disability.” *Vertigan v. Halter*, 260 F.3d
11 1044, 1050 (9th Cir. 2001). When discounting a claimant’s daily activities, an ALJ must explain
12 “which daily activities conflicted with which part of [c]laimant’s testimony.” *Burrell v. Colvin*,
13 775 F.3d 1133, 1138 (9th Cir. 2014) (emphasis in original).

14 During the hearing, Plaintiff provided that he “breaks things up into 45 minutes to an
15 hour kind of ordeals.” (AR 40). He also states that “I could probably walk the dogs for a half an
16 hour to 45 minutes. But to stand in the same place, like – like in a trade show, again, there’s no
17 way.” (AR 41). In her decision, the ALJ described Plaintiff’s daily activities as follows:

18 As for daily activities, the claimant lives alone and is able to do household chores,
19 with breaks every 30-60 minutes. He is also able to care for his dogs and take
20 them out for walks, but needs a long-handle poop scooper to clean after them as
21 he is unable to bend and squat without pain. The claimant also cannot sit and
22 watch television for more than an hour at a time because his back becomes too
23 stiff. In short, the claimant has described daily activities that support a remaining
24 functional capacity for a range of light exertion.

25 (AR 21) (citation omitted).

26 She discusses limitations to his daily activities in the preceding paragraph:

27 At the hearing, the claimant testified that he spends his days alternating positions
28 between standing, sitting, walking, and lying down due to pain. He explained that
he does activities in increments of 45 to 60 minutes followed by rest. If he sits for
more than an hour, his back becomes very stiff and he loses his balance when he
tries to get up. Standing in one place also aggravates his back pain. In addition, the
claimant has noticed that his grip is weak when he tries to pull wet clothes out of

1 his washer. He also needs to switch hands every five minutes when he talks on the
2 phone because the holding hand goes tingly and numb. Furthermore, he has
difficulty getting up from squatting and has to [use] his hands.

3 *Id.*

4 The ALJ may rely on the testimony of a vocational expert to assess whether a claimant
5 can perform any other work existing in significant numbers in the national economy, but the ALJ
6 is required to pose a hypothetical question that includes all of claimant's limitations that are
7 supported by substantial evidence in the record. *See Matthews v. Shalala*, 10 F.3d 678, 681 (9th
8 Cir. 1993). If the ALJ's hypothetical to the vocational expert does not incorporate all of a
9 claimant's limitations or is not supported by substantial evidence in the record, the vocational
10 expert's testimony has no evidentiary value. *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir.
11 1984). The Ninth Circuit has held "that in order for an ALJ to rely on a job description in the
12 Dictionary of Occupational Titles that fails to comport with a claimant's noted limitations, the
13 ALJ must definitively explain this deviation." *Pinto v. Massanari*, 249 F.3d 840, 847 (9th Cir.
14 2001).

15 During the hearing, the ALJ provided two hypotheticals to the vocational expert regarding
16 jobs available to be performed in the national economy. The first hypothetical required an
17 opportunity to alternate physical positions, such as between sitting and standing, every 45
18 minutes. It is for this hypothetical that the vocational expert provided the job positions of
19 photocopy machine operator, mail clerk non-postal, and office helper (AR 52-53) that the ALJ
20 utilized in making her disability decision (AR 24-25).

21 The second hypothetical the ALJ posed to the vocational expert added the condition that
22 the claimant required two additional breaks during the workday, taken on an unscheduled basis
23 for 15 minutes each to address a medical condition. With this condition, the vocational expert
24 provided that there would be no jobs available. (AR 53-54). Plaintiff's counsel then asked the
25 vocational expert a hypothetical posing the condition that the claimant would need to miss more
26 than two days per month on a consistent basis. The vocational expert provided that there would
27 not be sustainable employment in the national economy. (AR 55).

28 Though the ALJ provided a review of the medical evidence when determining her RFC

1 limitations (AR 21-23) and summarized Plaintiff’s claimed limitations regarding daily activities
 2 (AR 21), it is clear she did not incorporate Plaintiff’s testimony (as she characterized it) regarding
 3 his need to rest every 45 to 60 minutes during his daily activities. If she had done so, thereby
 4 requiring multiple additional breaks in a work setting, it appears from the hypotheticals posed to
 5 the vocational expert that there may not be any sustainable employment available in the national
 6 economy. The ALJ did not describe why this limitation was not credible with sufficient
 7 specificity to allow this Court to conclude that the ALJ rejected the testimony on permissible
 8 grounds and did not do so arbitrarily. *See Burrell*, 775 F.3d at 1138 (“To support a lack of
 9 credibility finding, the ALJ was required to point to specific facts in the record ...”).

10 Defendant argues that Plaintiff testified that “he alternated between activities such as
 11 chores and watching television *in order* to change positions” and, in fact, did not testify that he
 12 needed to alternate positions and take breaks. (Doc. 15 at 8-9) (emphasis in original). Defendant
 13 argues that, as such, the ALJ “fully accounted for Plaintiff’s claim that he could only sit or stand
 14 for 45 minutes at a time” by incorporating that limitation in the RFC. *Id.* at 8. However, this is
 15 not what the ALJ summarized in her decision, as noted above: “He explained that he does
 16 activities in increments of 45 to 60 minutes followed by rest.” (AR 21). The ALJ did not
 17 elaborate in her decision and thus the record is undeveloped as to the Defendant’s points. As
 18 noted *supra*, a court can “review only the reasons provided by the ALJ in the disability
 19 determination and may not affirm the ALJ on a ground upon which [she] did not rely.” *Garrison*,
 20 759 F.3d at 1010.

21 **B. Whether the ALJ Failed to Adequately Evaluate the Limiting Effects of**
 22 **Plaintiff’s Obesity**

23 Plaintiff asserts that the ALJ failed to address in her decision whether Plaintiff’s obesity
 24 resulted in additional functional work restrictions. Plaintiff argues that the ALJ did not explain
 25 how she reached her conclusion regarding whether obesity caused any physical limitations nor
 26 did she evaluate obesity when considering the supportability of Plaintiff’s symptom testimony
 27 and his reported need for rest breaks. Plaintiff argues this constituted harmful legal error because
 28 it prevents this Court from engaging in meaningful review.

1 Under the Commissioner’s governing Social Security Ruling (“SSR”), the functional
2 limitations caused by the MDI of obesity, alone or in combination with another impairment(s),
3 may medically equal a listing if, for example, obesity increases the severity of a coexisting or
4 related impairment(s) to the extent that the combination of impairments medically equals a
5 listing.” *C.C. v. O’Malley*, No. 23-CV-00408-LJC, 2024 WL 1354437, at *4 (N.D. Cal. Mar. 28,
6 2024) (citing SSR 19-2p, Titles II & XVI: Evaluating Cases Involving Obesity; quotations
7 omitted). “Under the SSR, the Social Security Administration will not make general assumptions
8 about the severity or functional effects of obesity combined with another impairment(s), but
9 instead evaluates each case based on the information in the case record to determine how obesity
10 affects other impairments.” *Id.* “As with any other impairment, the Social Administration must
11 explain how it reached its conclusion on whether obesity causes any limitations.” *Id.*

12 Besides determining obesity to be one of Plaintiff’s severe impairments (AR 19), the ALJ
13 discusses Plaintiff’s obesity only once in her decision, as follows:

14 Finally, the claimant has indicated that he weighed approximately 297 pounds at
15 the time of the application filing, which for a person of his height, corresponds to a
16 Body Mass Index (BMI) of 38.9, or moderate obesity under the clinical guidelines
17 of the National Institutes of Health (NIH) (2E/2). There is, however, no evidence
18 in the file that the claimant’s obesity aggravates his other impairments so much as
19 to result in listing-level severity. Therefore, consistent with Social Security Ruling
19-2p, I conclude that, while the claimant’s obesity is a severe impairment, it does
not, alone or in combination with other impairments, meet or medically equal a
listed impairment. (AR 20).

20 However, as noted in section III(A) above, Plaintiff’s neurosurgeon, Bjorn M. Lobo,
21 informed Plaintiff that his obesity may be exacerbating his back issues and resulting pain. (AR
22 348). During that appointment, on September 16, 2019, Dr. Lobo noted that he believed that
23 “weight gain is his most pressing issue. I have spent over 40 minutes discussing and counseling
24 him with weight loss and weight related issues including diet. I highly recommended the patient
25 be evaluated by dietitian for long-term weight loss.” (AR 348).

26 Dr. Lobo noted Plaintiff’s BMI of 39.6 at the time and provided in strong language that he
27 felt that Plaintiff’s weight was a primary contributor to his back problems and pain, in a
28 paragraph relating to “[l]umbar stenosis” as follows: “I believe the patient is likely having low

1 back strain with intermittent leg pain secondary to his excessive weight causing strain on his
2 lumbar spine.” (AR 348). As the ALJ concluded, degenerative disc disease of the cervical and
3 lumbar spine is a severe impairment (AR 19) and Dr. Lobo’s medical records reflect that
4 Plaintiff’s obesity may aggravate this other impairment. Additionally, obesity and weight gain
5 are also noted as “active problem[s]” in the most recent medical records in the transcript, dated
6 November 16, 2020. (AR 362). The ALJ did not address these points in her decision and thus
7 the record is undeveloped.

8 An ALJ’s mere acknowledgment of obesity as a severe impairment is insufficient when
9 the ALJ fails to provide “meaningful analysis” to “explain how Plaintiff’s obesity impacts her
10 other impairments or why he does not factor Plaintiff’s obesity in her RFC assessment.” *Mary*
11 *Elizabeth C. v. Saul*, No. CV 19-3723-KS, 2020 WL 2523116, at *16 (C.D. Cal. May 18, 2020)
12 (citing *Celaya v. Halter*, 332 F.3d 1177, 1182 (9th Cir. 2003)). See *Yolanda P. v. Kijakazi*, No.
13 1:20-cv-03245-JAG, 2022 WL 17248127, at *4 (E.D. Wash. Sept. 30, 2022) (holding that ALJ’s
14 failure to address what effects plaintiff’s obesity had on her knee impairments supported remand,
15 notwithstanding ALJ’s conclusory assertion that a restriction to sedentary work with additional
16 conditions sufficiently accommodated any limitations caused by obesity); *Ramirez v. Berryhill*,
17 No. SACV 17-0417 (KS), 2018 WL 2392155, at *11 (C.D. Cal. May 25, 2018) (“[t]he ALJ found
18 obesity to be a severe impairment, but offers no explanation of how that impairment impacts
19 Plaintiff’s other impairments and no explanation for why obesity is not discussed”).

20 Accordingly, given the connection noted in the medical records between Plaintiff’s back
21 issues and his obesity, the ALJ’s failure to address obesity as a severe impairment in combination
22 with Plaintiff’s other impairments is legal error that is not harmless.

23 * * * * *

24 In sum, the ALJ has failed to meet the requirement to articulate clear and convincing
25 reasons to reject the Plaintiff’s pain and symptom testimony and to explain her conclusions in
26 regards to Plaintiff’s obesity.

27 The decision whether to remand for further proceedings or simply to award benefits is
28 within the discretion of the Court. See *Salvador v. Sullivan*, 917 F.2d 13, 15 (9th Cir. 1990).

1 Remand for further proceedings is warranted where additional administrative proceedings could
2 remedy defects in the decision. *See Kail v. Heckler*, 722 F.2d 1496, 1497 (9th Cir. 1984).
3 Remand for the payment of benefits is appropriate where no useful purpose would be served by
4 further administrative proceedings (*Kornock v. Harris*, 648 F.2d 525, 527 (9th Cir. 1980)); where
5 the record has been fully developed (*Hoffman v. Heckler*, 785 F.2d 1423, 1425 (9th Cir. 1986));
6 or where remand would unnecessarily delay the receipt of benefits to which the disabled Plaintiff
7 is entitled (*Bilby v. Schweiker*, 762 F.2d 716, 719 (9th Cir. 1985)).

8 Here, Plaintiff seeks an order from the Court reversing the ALJ's decision and remanding
9 for further administrative proceedings (Doc. 14 at 12), and the Commissioner argues that the
10 Court should affirm the ALJ's decision finding Plaintiff not disabled (Doc. 15 at 16). The Court
11 concludes that remand for further proceedings is warranted because additional administrative
12 proceedings may remedy the deficiencies in the ALJ's decision noted herein.

13 IV. CONCLUSION

14 For the reasons set for above, the Court finds the ALJ erred in evaluating opinions in the
15 record and failed to apply the proper legal standards. Accordingly, IT IS HEREBY ORDERED
16 that:

- 17 1. Plaintiff's motion for summary judgment (Doc. 14) is **GRANTED**.
- 18 2. Defendant's cross-motion for summary judgment (Doc. 15) is **DENIED**.
- 19 3. This matter is **REMANDED** pursuant to sentence four of 42 U.S.C. §405(g) for further
20 proceedings consistent with this decision; and
- 21 4. The Clerk of the Court is **DIRECTED** to enter judgment in favor of Plaintiff Kyle Young
22 and against Defendant Commissioner of Social Security.

23 IT IS SO ORDERED.

24 Dated: December 20, 2024

25 
UNITED STATES MAGISTRATE JUDGE